

JUL 20 1995

Decision 95-07-047 July 19, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Omnivision, (complainant),
vs.
Pacific Bell, (defendant)

(ECP)
Case 95-01-040
(Filed January 27, 1995)

ORIGINAL

Henry E. Nielsen, for himself, complainant
Nancy Hensley, for Pacific Bell, defendant.

Henry E. Nielsen, owner of Omnivision (complainant), alleges that Pacific Bell (defendant), has provided faulty and inadequate service since it recommended a "hunting arrangement" business telephone system. A "hunting arrangement" is one which searches a customer's telephone lines for a vacant line to accommodate each incoming or outgoing call. Complainant has two business class service lines with a hunting feature attached to the second line. In September 1987, complainant requested and defendant installed a business telephone system to allow simultaneous fax and voice telephone calls. However, complainant did not install the fax machine until July 1994. After the fax machine was installed, complainant frequently experienced noise and static during telephone calls. Complainant alleges that these frequent interruptions of business calls caused the loss of customers. Complainant requests a refund of \$958.80, the total charges he has paid for the second business line and hunting feature since September 1987.

JUL 20 1995

Decision 95-03-047 July 19, 1995

Defendant admits that it has responded to numerous service complaints regarding complainant's telephone system. However, after inspecting the telephone lines and complainant's fax machine, defendant believes, and has advised complainant, that the fax machine malfunctions by failing to distinguish between a fax message and a voice telephone call.

Defendant contends there is no malfunction in the service it installed. Defendant requests that the complaint be denied and that complainant pay the outstanding balance on his bill. Alternatively, defendant argues that complainant has benefitted from the hunting arrangement from 1987 to 1994 and may only receive a refund for the period of poor service, that is, from July 1994 to the present.

Henry E. Nielsen, for himself, complainant, and Henry Hensley, for Pacific Bell, defendant. Therefore, the parties request the Commission to decide whether a credit to complainant's bill is appropriate based upon the quality of defendant's service and the amount of the credit, if any.

The Hearing

An unreported hearing was held on March 17, 1995 in Stockton, California. At the hearing Nielsen, representing complainant, and Clark Bullock, defendant's field supervisor, testified and presented relevant documents. Pursuant to the assigned Administrative Law Judge's request, on March 31, 1995, defendant submitted Exhibit 7, the 1994 and 1995 rates for complainant's business features.

Nielsen testified that, in addition to frequent static while talking to customers, he experienced losing faxes when there was an incoming fax and he was talking on the second line. He explained that he has a contract with RCA to install satellite dishes and receives his order for installation by fax. If he does not respond within 8 hours, RCA contacts another supplier to complete the job.

since September 1987.

Nielsen testified that he ordered the telephone system in response to defendant's advertisement specifically directed to small businesses. He contends that defendant's advertising specified that small business service would be improved by this telephone service option. He argues that instead of improving his business, the configuration which defendant recommended never functioned properly and caused business losses. He testified that he relied solely on the technical advice of defendant's representatives when ordering the system. In attempting to report his problems, Nielsen alleges he was frustrated when "passed" from one employee to another. In October 1994 defendant inspected complainant's incoming lines and indicated no detectable problem. The same problems continued. In December 1994 defendant again inspected the lines this time at complainant's expense. On one of these visits, defendant's repairman told Nielsen that the building alarm was wired to his telephone. Defendant charged complainant \$71 for the second service call and complainant paid the bill. (Exh. 2 and 3.) Nielsen alleges defendant did not test the lines when they were installed.

Nielsen explains that he does not request damages, as defendant alleges, but requests a refund of all charges for the hunting system based upon the system's malfunction since its installation. Prior to installation of the system, complainant had one business line.

Nielsen admits that the malfunction began after the fax was installed in July 1994. He presented a letter from the fax machine manufacturer, Mother Lode Office Products, signed by Carl Henderson. Henderson indicates in the letter that the fax machine has been tested and performs to the manufacturer's specifications. (Exh. 4.) Henderson also indicates that the fax machine will not function properly with the existing hunting configuration and needs a dedicated line. Henderson offers to refund the money paid for

the fax and retrieve it since the telephone service is inadequate. Defendant did not object to receipt of the letter into evidence or dispute its contents.

Complainant disconnected the fax at the end of February and has had no further service problems. However, he is completely dissatisfied with the service.

Bullock, defendant's field supervisor, testified that defendant investigated Nielsen's ongoing complaints, documenting the problems as perceived by defendant in several letters. Bullock believes hooking up the fax machine creates the problem and offers the following solutions:

1. remove the hunting feature;

2. install a third, independent line for the fax machine;

3. remove the second telephone line and defendant will credit the charges for the second line retroactive to the date the fax machine was installed (July 1994);

4. credit (by defendant) all charges retroactive to the date the fax machine was installed (July 1994);

5. purchase and install (at complainant's expense) automatic exclusion equipment on the second line;

6. use Star 511 to disable the fax machine's automatic answer capability;

7. add call waiting to the first line, remove the hunting feature on the second line, and dedicate the second line to the fax machine.

Bullock recommends the option of installing a third business line for the fax machine or removing the hunting feature.

Although Bullock also testified that he did not refute Nielsen's allegations that Nielsen requested a dedicated line, Hengerson offers to refund the money paid for

fulfilled the obligations under § 451. As to the period between July and October 1994, Bullock acknowledged that most faxes require a dedicated line.

Conclusion

On May 1, 1995, the assigned Administrative Law Judge notified the parties that official notice would be taken of PU Code § 451, specifically defendant's obligation to provide satisfactory quality of service. No objections were received.

In September 1987 Nielsen ordered an additional business line with a hunting feature based upon defendant's representations that this system would satisfy his business needs. At the time Nielsen ordered the new service configuration from defendant, he explained to defendant that he would be adding a fax machine in the future. Nielsen's testimony on this point was credible and no witness or documents contradicted these statements. There is also no dispute over the fact that prior to the installation of the fax machine complainant had been satisfied with his telephone service, including the second line and the hunting arrangement.

Once the fax machine was added in July 1994, however, Nielsen determined the system did not provide the quality of service he desired. Defendant admits that the system as presently configured, two lines with a hunting feature, will not function with the fax machine. On cross examination, defendant's witness Bullock stated that it is common practice for businesses to have a single line dedicated to a fax machine. If it is common knowledge that a fax machine needs a dedicated line, defendant should have known that a business system without this requirement would not provide satisfactory service. It appears that the defendant first knew of complainant's problem with the telephone service in October 1994.

Given the analysis above, we must reject the complainant's requested relief. Complainant was held harmless for the period of nearly seven years between the installation of the second line and the purchase of the fax machine, hence, defendant.

DANIEL W. FESSLER
P. GREGORY CONTON
JESSIE J. KNIGHT, JR.
HENRY M. DUBOIS
Commissioners

Wesley Frank
Acting Executive Director

fulfilled its obligations under § 451. As to the period between July and October 1994, we observe that defendant's obligations under § 451 do not extend to the quality of service effected by inside wire or customer premises equipment because these services are essentially deregulated. Therefore, we cannot hold defendant responsible for the poor quality of service that resulted from the connection of the fax machine until complainant notified defendant of his troubles.

We further find that defendant should have known in October 1994 that the complainant's configuration for telephone service was inadequate for a fax machine. We conclude that the service was inadequate from October 1994 and that defendant has violated PU Code § 451 because it did not fulfill its obligation to provide satisfactory service. Nielsen is entitled to a refund of the charges for the additional line, hunting feature and service calls for period beginning October 1994 to the effective date of this order.

ORDER

IT IS ORDERED that within 60 days from the effective date of this order Pacific Bell shall refund to OmniVision all charges with appropriate interest for the second business line, hunting feature and service calls related to the "hunting arrangement" system from the date of its visit to the complainant's premise in October 1994 to the effective date of this order. Pacific Bell shall also pay interest accrued from October 1994 to the date paid at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G.13.

This order is effective today.

Dated July 19, 1995, at San Francisco, California.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS, TODAY.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

Wealey Franklin
Acting Executive Director